

(3) Be certified as a nurse-midwife by the American College of Nurse-Midwives or the American College of Nurse-Midwives Certification Council.

(b) *Services.* A certified nurse-midwife's services are services furnished by a certified nurse-midwife and services and supplies furnished as an incident to the certified nurse-midwife's services that—

(1) Are within the scope of practice authorized by the law of the State in which they are furnished and would otherwise be covered if furnished by a physician or as an incident to a physician's service; and

(2) Unless required by State law, are provided without regard to whether the certified nurse-midwife is under the supervision of, or associated with, a physician or other health care provider.

(c) *Incident to services: Basic rule.* Medicare Part B covers services and supplies incident to the services of a certified nurse-midwife if the requirements of § 410.26 are met.

(d) *Professional services.* A nurse-midwife can be paid for professional services only when the services have been performed personally by the nurse-midwife.

(1) Supervision of other nonphysician staff by a nurse-midwife does not constitute personal performance of a professional service by the nurse-midwife.

(2) The service is provided on an assignment-related basis, and a nurse-midwife may not charge a beneficiary for a service not payable under this provision. If the beneficiary has made payment for a service, the nurse-midwife must make the appropriate refund to the beneficiary.

(3) A nurse-midwife may provide services that he or she is legally authorized to perform under State law as a nurse-midwife, if the services would otherwise be covered by the Medicare program when furnished by a physician or incident to a physicians' professional services.

(e) *Medical record documentation.* For certified nurse-midwives' services, the certified nurse-midwife may review and verify (sign and date), rather than re-document, notes in a patient's medical record made by physicians; residents; nurses; medical, physician assistant, and advanced practice registered nurse

students; or other members of the medical team, including, as applicable, notes documenting the certified nurse-midwife's presence and participation in the service.

[63 FR 58909, Nov. 2, 1998, as amended at 78 FR 74811, Dec. 10, 2013; 84 FR 63191, Nov. 15, 2019]

§ 410.78 Telehealth services.

(a) *Definitions.* For the purposes of this section the following definitions apply:

(1) *Asynchronous store and forward technologies* means the transmission of a patient's medical information from an originating site to the physician or practitioner at the distant site. The physician or practitioner at the distant site can review the medical case without the patient being present. An asynchronous telecommunications system in single media format does not include telephone calls, images transmitted via facsimile machines and text messages without visualization of the patient (electronic mail). Photographs visualized by a telecommunications system must be specific to the patient's medical condition and adequate for furnishing or confirming a diagnosis and or treatment plan. Dermatological photographs, for example, a photograph of a skin lesion, may be considered to meet the requirement of a single media format under this provision.

(2) *Distant site* means the site at which the physician or practitioner delivering the service is located at the time the service is provided via a telecommunications system.

(3) *Interactive telecommunications system* means multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner. Telephones, facsimile machines, and electronic mail systems do not meet the definition of an interactive telecommunications system.

(i) *Exception.* For the duration of the Public Health Emergency as defined in § 400.200 of this chapter, *Interactive telecommunications system* means multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way,

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real-time interactive communication between the patient and distant site physician or practitioner.

(ii) [Reserved]

(4) *Originating site* means the location of an eligible Medicare beneficiary at the time the service being furnished via a telecommunications system occurs. For asynchronous store and forward telecommunications technologies, the only originating sites are Federal telemedicine demonstration programs conducted in Alaska or Hawaii.

(b) *General rule.* Medicare Part B pays for covered telehealth services included on the telehealth list when furnished by an interactive telecommunications system if the following conditions are met, except that for the duration of the Public Health Emergency as defined in §400.200 of this chapter, Medicare Part B pays for office and other outpatient visits, professional consultation, psychiatric diagnostic interview examination, individual psychotherapy, pharmacologic management and end stage renal disease related services included in the monthly capitation payment furnished by an interactive telecommunications system if the following conditions are met:

(1) The physician or practitioner at the distant site must be licensed to furnish the service under State law. The physician or practitioner at the distant site who is licensed under State law to furnish a covered telehealth service described in this section may bill, and receive payment for, the service when it is delivered via a telecommunications system.

(2) The practitioner at the distant site is one of the following:

(i) A physician as described in §410.20.

(ii) A physician assistant as described §410.74.

(iii) A nurse practitioner as described in §410.75.

(iv) A clinical nurse specialist as described in §410.76.

(v) A nurse-midwife as described in §410.77.

(vi) A clinical psychologist as described in §410.71.

(vii) A clinical social worker as described in §410.73.

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(viii) A registered dietitian or nutrition professional as described in §410.134.

(ix) A certified registered nurse anesthetist as described in §410.69.

(3) The services are furnished to a beneficiary at an originating site, which is one of the following:

(i) The office of a physician or practitioner.

(ii) A critical access hospital (as described in section 1861(mm)(1) of the Act).

(iii) A rural health clinic (as described in section 1861(aa)(2) of the Act).

(iv) A Federally qualified health center (as defined in section 1861(aa)(4) of the Act).

(v) A hospital (as defined in section 1861(e) of the Act).

(vi) A hospital-based or critical access hospital-based renal dialysis center (including satellites).

(vii) A skilled nursing facility (as defined in section 1819(a) of the Act).

(viii) A community mental health center (as defined in section 1861(ff)(3)(B) of the Act).

(ix) A renal dialysis facility (only for purposes of the home dialysis monthly ESRD-related clinical assessment in section 1881(b)(3)(B) of the Act);

(x) The home of an individual (only for purposes of the home dialysis ESRD-related clinical assessment in section 1881(b)(3)(B) of the Act).

(xi) A mobile stroke unit (only for purposes of diagnosis, evaluation, or treatment of symptoms of an acute stroke provided in accordance with section 1834(m)(6) of the Act).

(xii) The home of an individual (only for purposes of treatment of a substance use disorder or a co-occurring mental health disorder, furnished on or after July 1, 2019, to an individual with a substance use disorder diagnosis.

(4) Except as provided in paragraph (b)(4)(iv) of this section, originating sites must be:

(i) Located in a health professional shortage area (as defined under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A)) that is either outside of a Metropolitan Statistical Area (MSA) as of December 31st of the preceding calendar year or within a

rural census tract of an MSA as determined by the Office of Rural Health Policy of the Health Resources and Services Administration as of December 31st of the preceding calendar year, or

(ii) Located in a county that is not included in a Metropolitan Statistical Area as defined in section 1886(d)(2)(D) of the Act as of December 31st of the preceding year, or

(iii) An entity participating in a Federal telemedicine demonstration project that has been approved by, or receive funding from, the Secretary as of December 31, 2000, regardless of its geographic location.

(iv) The geographic requirements specified in paragraph (b)(4) of this section do not apply to the following telehealth services:

(A) Home dialysis monthly ESRD-related clinical assessment services furnished on or after January 1, 2019, at an originating site described in paragraphs (b)(3)(vi), (ix) or (x) of this section, in accordance with section 1881(b)(3)(B) of the Act; and

(B) Services furnished on or after January 1, 2019, for purposes of diagnosis, evaluation, or treatment of symptoms of an acute stroke.

(C) Services furnished on or after July 1, 2019 to an individual with a substance use disorder diagnosis, for purposes of treatment of a substance use disorder or a co-occurring mental health disorder.

(5) The medical examination of the patient is under the control of the physician or practitioner at the distant site.

(c) *Telepresenter not required.* A telepresenter is not required as a condition of payment unless a telepresenter is medically necessary as determined by the physician or practitioner at the distant site.

(d) *Exception to the interactive telecommunications system requirement.* For Federal telemedicine demonstration programs conducted in Alaska or Hawaii only, Medicare payment is permitted for telehealth when asynchronous store and forward technologies, in single or multimedia formats, are used as a substitute for an interactive telecommunications system.

(e) *Limitations.* (1) A clinical psychologist and a clinical social worker may bill and receive payment for individual psychotherapy via a telecommunications system, but may not seek payment for medical evaluation and management services.

(2) The physician visits required under § 483.40(c) of this title may not be furnished as telehealth services.

(f) *Process for adding or deleting services.* Except as otherwise provided in this paragraph, changes to the list of Medicare telehealth services are made through the annual physician fee schedule rulemaking process. During the Public Health Emergency for the COVID-19 pandemic, as defined in § 400.200 of this chapter, we will use a subregulatory process to modify the services included on the Medicare telehealth list during the Public Health Emergency taking into consideration infection control, patient safety, and other public health concerns resulting from the emergency. A list of the services covered as telehealth services under this section is available on the CMS website.

[66 FR 55330, Nov. 1, 2001, as amended at 67 FR 80041, Dec. 31, 2002; 69 FR 66423, Nov. 15, 2004; 70 FR 70330, Nov. 21, 2005; 72 FR 66399, Nov. 27, 2007; 73 FR 69934, Nov. 19, 2008; 74 FR 62005, Nov. 25, 2009; 75 FR 73615, Nov. 29, 2010; 76 FR 73470, Nov. 28, 2011; 77 FR 69363, Nov. 16, 2012; 78 FR 74811, Dec. 10, 2013; 79 FR 68002, Nov. 13, 2014; 80 FR 71373, Nov. 16, 2015; 83 FR 60073, Nov. 23, 2018; 85 FR 19286, Apr. 6, 2020; 85 FR 27621, May 8, 2020]

§ 410.79 Medicare Diabetes Prevention Program expanded model: Conditions of coverage.

(a) Medicare Diabetes Prevention Program (MDPP) services will be available beginning on April 1, 2018.

(b) *Definitions.* For purposes of this section, the following definitions apply:

Baseline weight means the MDPP beneficiary's body weight recorded during that beneficiary's first core session.

CDC-approved DPP curriculum refers to the content of the core sessions, core maintenance sessions, and ongoing maintenance sessions. The curriculum may be either the CDC-preferred curriculum as designated by the CDC DPRP Standards or an alternative